

**SUBCONTRACT No. INPUT**  
**between**  
**THE REGENTS of the UNIVERSITY of CALIFORNIA,**  
**OFFICE of the PRESIDENT**  
**and**  
**INPUT**

**Project Title: INPUT**

This Subcontract is between The Regents of the University of California, Office of the President (“UCOP” or “The Regents”) on behalf of the California Institute for Energy and Environment (“CIEE”) and INPUT (“Subcontractor”).

Whereas, the California State Energy Resources Conservation and Development Commission (“Commission” or “CEC”) is responsible for implementing the Public Interest Energy Research (PIER) Program; and

Whereas, UCOP has entered into Agreement INPUT with the Commission to fund research, development, and demonstration awards for the PIER Program; and

Whereas, Subcontractor’s proposal has been selected for conducting research or other activities contributing to the Commission’s mission and to the purposes of the prime contract;

NOW THEREFORE, the Parties mutually agree as follows:

**1. SCOPE OF WORK**

The research to be provided under this Subcontract shall be in accordance with the following Exhibits, which are attached and incorporated herein:

Exhibit A:	Statement of Work, including Attachment A-1 and Schedule of Deliverables
Exhibit B:	Project Budget
Exhibit C:	Definitions

The Statement of Work may be modified by mutual written agreement of the Parties. Significant changes in the scope of work must be approved by UCOP and the Commission by amendment to this Subcontract.

If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances whatsoever which may jeopardize its fulfillment of the agreed performance of all or any portion of the Subcontract, it shall immediately notify the Regents’ Subcontract Administrator in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

**2. PERIOD OF PERFORMANCE**

The period of performance for this Subcontract shall be from INPUT through INPUT.

### **3. BUDGET AND EXPENDITURES**

- A. The total amount of funds made available and reimbursable under this Subcontract shall not exceed \$INPUT in accordance with the approved budget in Exhibit B.
- B. Allowable costs shall be determined in accordance with OMB Circular A-21, "Cost Principles Applicable to Grants, Contracts and Other Agreements with Institutions of Higher Education," incorporated by reference as part of this Subcontract. OMB Circulars may be accessed from the Office of Management and Budget website, [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html).
- C. Prior written approval by UCOP is required for the following:
  - 1) Increases in budget categories in excess of \$5,000 **and** 15% of the amount originally approved for that category (i.e., budget reallocations under \$5,000, regardless of the percent change represented, do not require prior approval). No increase in the total budget amount shall be allowed except by amendment to this Subcontract.
  - 2) Expenditures for additional equipment, as defined in Paragraph 7 herein.
- D. Items included in the budget in Exhibit B are considered approved. Unless specifically approved by UCOP, funds are not authorized for entertainment or purchase of general-purpose software or office equipment, including computers, typewriters, word processors, duplication devices, and telecommunication devices.

### **4. SUBCONTRACT MANAGEMENT AND KEY PERSONNEL**

- A. Subcontractor Principal Investigator and Key Personnel. INPUT is designated as the Subcontractor Principal Investigator. Key Personnel for the Project includes the Principal Investigator and INPUT. No substitution of key personnel may be made without UCOP's prior written approval.
- B. UCOP Research Coordinator. INPUT is designated as the UCOP Research Coordinator. The Research Coordinator is responsible for oversight of performance under this Subcontract.
- C. UCOP Subcontract Administrator. John Snyder is designated as Subcontract Administrator. The Subcontract Administrator is responsible for administration of this Subcontract, and may authorize no-cost extensions and rebudgeting; administrative issues are to be routed through him for forwarding to the appropriate UCOP representative.

### **5. INVOICING AND PAYMENT**

- A. UCOP shall provide monthly payments in arrears upon receipt of an itemized invoice containing the following elements:

- 1) Salaries and wages (including fringe benefits) for all personnel
  - 2) Expenditures for each subcontract or consultant (if any)
  - 3) Travel
  - 4) Equipment
  - 5) Miscellaneous expenses
  - 6) Indirect costs
- B. Payments will be made provided that the Commission Project Manager has received and approved the written progress reports and any other required deliverables.
- C. Invoices may be sent via hardcopy, email, or fax as follows:
- Subcontract Specialist  
California Institute for Energy and Environment  
UC Office of the President  
1333 Broadway, Suite 240  
Oakland, CA 94612-1918  
Phone: (510) 287-3326  
Fax: (510) 287-3328  
Email: Brad.Niess@ucop.edu
- D. 10% of each invoice shall be retained by UCOP and released to Subcontractor only upon the Commission's approval that the work under this Subcontract has been satisfactorily completed and the key deliverables have been received and accepted.
- E. Subcontractor's final invoice must be submitted no later than 60 calendar days after the termination of this Subcontract.

## **6. SUBCONTRACTORS**

Except for Subcontractors identified in the approved budget in Exhibit B, Subcontractor shall not subcontract or assign any part of the Scope of Work with a cost in excess of \$5,000 without prior written approval by UCOP. Subcontractor shall not contract with University of California employees without prior written approval from UCOP. Subcontractor shall require its lower tier subcontractors to comply with the terms and conditions contained herein.

## **7. EQUIPMENT**

- A. Definition. Equipment is defined as non-expendable, tangible, personal property, which has an acquisition cost of \$5,000 or more, is free-standing, and has a normal life expectancy of one year or more.
- B. Title. Except as otherwise provided by the Regents, title to any equipment purchased with Subcontract funds shall pass directly from the vendor to the Regents. Property furnished by the Regents, and equipment purchased or held by the Subcontractor, title to which vests in the Regents under this paragraph, are hereinafter referred to as Regents' property. Title to Regents' property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Regents; nor shall such Regents property or any part thereof be or become a fixture or lose its identity by reason of affixation to any realty.

- C. Identification. To the extent directed by the Regents, the Subcontractor shall identify Regents' property coming into the Subcontractor's possession or custody by marking or segregating in such a way, satisfactory to the Regents, as shall indicate its ownership by the Regents.
- D. Disposition. Upon termination of this Subcontract or when the equipment is no longer needed for the project funded under this Subcontract, whichever is sooner, Subcontractor shall contact UCOP to request disposition instructions regarding equipment. If no disposition instructions are provided within 120 days after such request, the Subcontractor shall have no further obligation to UCOP regarding such equipment. When authorized in writing by the Regents during the progress of the work or upon completion or termination of this Subcontract, the Subcontractor may, upon such terms and conditions as the Regents may approve, sell or exchange such property or acquire such property at a price agreed upon by the Regents and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition or the amount of the agreed fair value of any such property acquired by the Subcontractor shall be applied in reduction of costs allowable under this Subcontract or shall be otherwise credited to account of the Regents, as the Regents may direct. Upon completion of the work or the termination of this Subcontract, the Subcontractor shall render an accounting, as prescribed by the Regents, of all Regents' property which has come into the possession or custody of the Subcontractor under this Subcontract.

## **8. TRAVEL AND PER DIEM**

- A. Subcontractor shall be reimbursed for travel and per diem in accordance with UCOP-approved rates for its employees. UC shall provide a copy of the current approved rates to Subcontractor upon request. Travel expenses in excess of the UCOP-approved rates cannot be reimbursed. Travel expenses shall be paid from the location where the employees assigned to the Subcontract are permanently located.
- B. Subcontractor must document travel expenses in its records as follows:
  - 1) Expenses must be detailed using the UCOP-approved rates.
  - 2) Expenses must be listed by trip including dates and times of departure and return.
  - 3) Subcontractor must retain receipts for travel expenses claimed for audit and verification.

## **9. STANDARD OF PERFORMANCE**

- A. In performing work under this Subcontract, Subcontractor shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures.
- B. In the event that Subcontractor fails to perform in accordance with the foregoing standard of performance, UCOP, the Commission, and Subcontractor shall seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the dispute resolution process described in Paragraph 14 herein, DISPUTES.
- C. Nothing contained in this section is intended to limit any of the rights or remedies which UCOP or the Commission may have under law.

## 10. INDEPENDENT CONTRACTOR

Subcontractor and its employees, consultants, agents, or independent contractors will perform all services under this Subcontract as independent contractors. Nothing in this Subcontract will be deemed to create an employer-employee or principal-agent relationship between the Regents or Commission and Subcontractor's employees, consultants, agents, or independent contractors. Subcontractor and its employees, consultants, agents and lower tier subawardees will not, by virtue of any services provided under this Subcontract, be entitled to participate, as an employee or otherwise, in or under any employee benefit plan of Regents or any employment right or benefit available to or enjoyed by employees of Regents.

## 11. CONFIDENTIALITY

**IF confidential deliverables are NOT anticipated, use this paragraph:**

No confidential deliverables are anticipated under this Subcontract. All products including, but not limited to, Progress Reports, task products, and the Final Report shall not contain confidential information except when the Commission Contract Manager and OP/CIEE deem it necessary to include confidential information in a product. In such event, Subcontractor shall prepare the deliverable in two separate volumes: one for public distribution and one to be maintained in UCOP's and the Commission's confidential records. Subcontractor shall abide by UCOP's and the Commission's current policies on identifying and submitting confidential data.

**IF confidential deliverables ARE anticipated, use these paragraphs:**

- A. **Determination.** The Commission Executive Director makes the final determination of confidentiality. In the event there is a disagreement over the items to be delivered under the Subcontract, the Parties shall use the Disputes clause. If Subcontractor wishes to appeal the Executive Director's determination, the appeal shall be made via UCOP to the full Commission. If Subcontractor disagrees with this determination, Subcontractor may seek judicial review as per Title 20 CCR 2501, et seq.
- B. **Public and Confidential Products.** Only those products/items specifically listed in this Subcontract or in a subsequent determination of confidentiality qualify as confidential products. All products including, but not limited to, progress reports, task products and the Final Report shall not contain confidential information except when the Commission and UCOP deem it necessary to include confidential information in a product. In such event, Subcontractor shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records.
- C. **Future Confidential Information.** During the period of this Subcontract, it is possible that Subcontractor may develop additional data or information that UCOP/Commission considers being protectable as confidential information. In this event, the Commission shall provide a copy of the Commission Application for Confidential Designation to Subcontractor, via UCOP. Subcontractor must list all items and information along with justification for confidentiality and submit the application to the Commission via UCOP.
- D. **Identifying and Submitting Confidential Information.** Each document containing confidential information submitted by Subcontractor shall be marked "Confidential" and delivered in a sealed package to the Commission via UCOP. The confidential information will only be available to those persons authorized by the Commission's Executive Director.

## **12. INTELLECTUAL PROPERTY DEVELOPED PRIOR TO THIS SUBCONTRACT**

Neither UCOP nor the Commission makes a claim to intellectual property that existed prior to this Subcontract and was developed without UCOP or Commission funding. Each Scope of Work shall identify any applicable pre-existing intellectual property.

## **13. INTELLECTUAL PROPERTY**

Terms used in this paragraph and elsewhere in this Subcontract are defined in Exhibit C, Definitions.

- A. UCOP's and Commission's Rights in Deliverables. Deliverables and reports specified for delivery to UCOP and the Commission under this Subcontract shall become the property of the Commission. UCOP and the Commission may use, publish, and reproduce the deliverables and reports subject to the provisions of Subparagraph C.

- B. Rights in Technical, Generated, and Deliverable Data

- 1) Subcontractor's Rights. Data (technical, generated and deliverable) produced under this Subcontract shall be the property of Subcontractor, limited by the license retained by UCOP and the Commission in (2) below, and the rights that UCOP and the Commission have in deliverables specified above in Subparagraph A.
  - 2) UCOP's and Commission's Rights. Subcontractor shall provide UCOP and the Commission with a copy of all technical, generated and deliverable data produced under the Subcontract, when requested.

Subcontractor is not required to copy and submit data that the Commission Project Manager has identified as being unusable to the Commission and the PIER program. For instance, some data may not warrant routine copying and shipping because this raw data is too disaggregated or voluminous for practical application. Retention of such data at Subcontractor's facility for inspection, review and possible copying by the Commission is expected to be a more efficient use of Commission staff and Subcontractor's time and efforts. However, upon request by the Commission, Subcontractor shall provide the Commission access to review technical and generated data produced in the course of this Subcontract that is not requested to be delivered.

For all data (technical, generated and deliverable) produced under this Subcontract, UCOP and the Commission retain a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the data, subject to the provisions of Subparagraph C.

- C. Limitations on Disclosure of Subcontractor's Confidential Records

- 1) Data provided to UCOP and the Commission by Subcontractor, which data UCOP and the Commission have not already agreed to keep confidential and which Subcontractor seeks to have designated as confidential, or is the subject of a pending application of confidentiality, shall not be disclosed by UCOP or the Commission except as provided in

Title 20 CCR Sections 2506 and 2507 (or as they may be amended), unless disclosure is ordered by a Court of competent jurisdiction.

- 2) It is the Commission's intent to use and release project results such as deliverables and data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, UCOP and the Commission shall not disclose confidential data or the contents of reports containing data considered by Subcontractor as confidential, without first providing a copy of the disclosure document for review and comment by Subcontractor. Subcontractor shall have no less than 10 working days for review and comment and, if appropriate, to make an application for confidentiality on some or all of the data. The Commission shall consider the comments of Subcontractor and use professional judgment in revising the report, information or data accordingly.
- D. Exclusive Remedy. In the event that UCOP or the Commission intends to publish or has disclosed data that Subcontractor considers confidential, Subcontractor's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.
- E. Waiver of Consequential Damages. In no event will UCOP or the Commission be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of Subcontractor's confidential records, even if UCOP or the Commission has been advised of the possibility of such damage. Damages that UCOP and the Commission will not be responsible for include, but are not limited to, loss of profit; loss of savings or revenue; loss of goodwill; loss of use of the product or any associated equipment; cost of capital; cost of any substitute equipment, facilities, or services; downtime; the claims of third parties including customers; and injury to property.
- F. Limitations on Subcontractor Disclosure of Subcontract Data, Information, Reports and Records
- 1) Subcontractor will not disclose the contents of the final or any preliminary deliverable or report without first providing a copy of the disclosure document for review and comment to UCOP and the Commission Project Manager. Subcontractor shall consider the comments of UCOP and the Commission Project Manager and use professional judgment in revising the reports, information or data accordingly.
  - 2) After any document submitted has become a part of the public records of the State, Subcontractor may, if it wishes to do so at its own expense, publish or utilize the same, but shall include the legal notice as stated in Exhibit A of this Subcontract.
  - 3) Notwithstanding the foregoing, in the event any public statement is made by UCOP or the Commission as to the role of Subcontractor or the content of any preliminary or Final Report of Subcontractor hereunder, Subcontractor may, if it believes such statement to be incorrect, state publicly what it believes is correct.
  - 4) No record that is provided by UCOP or the Commission to Subcontractor for Subcontractor's use in executing this Subcontract and which has been designated as confidential, or is the subject of a pending Application for Confidential Designation, except as provided in Title 20, California Code of Regulations (CCR), sections 2506 and

2507, shall be disclosed, unless disclosure is ordered by a court of competent jurisdiction (Title 20 CCR, Sections 2501, et seq.). At the election of UCOP or the Commission, Subcontractor, Subcontractor's employees, and any subcontractor shall execute a "Confidentiality Agreement," supplied by UCOP.

- 5) Subcontractor acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Subcontract will be informed about the restrictions contained herein and to abide by the above terms.
- G. **Proprietary Data.** Proprietary data owned by Subcontractor shall remain with Subcontractor throughout the term of this Subcontract and thereafter. The extent of UCOP and Commission access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable hereunder or to establish a baseline for repayment purposes.
- H. **Preservation of Data.** Any data which is reserved to Subcontractor by the express terms hereof, and pre-existing proprietary or confidential data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by Subcontractor at Subcontractor's own expense for a period of not less than three years after final payment, unless a longer period of record retention is stipulated.
- I. **Destruction of Data.** Before the expiration of three years and before changing the form of or destroying any such data, including technical, generated, deliverable proprietary data or trade secrets, Subcontractor shall notify UCOP and Commission of any such contemplated action and UCOP or Commission may, within thirty (30) days after said notification, determine whether it desires said data to be further preserved. If UCOP or Commission so elects, the expense of further preserving said data shall be paid for by UCOP or the Commission. Subcontractor agrees that UCOP or Commission may, at its own expense, have reasonable access to said data throughout the time during which said data is preserved. Subcontractor agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said data or, at UCOP's or Commission's expense, to furnish such competent witnesses.
- J. **Patent Rights**
  - 1) Patent rights for any Subject Invention, whether actually patented or unpatented, will be the property of Subcontractor whose employees or researchers are inventors of such invention pursuant to U.S. patent law, subject to UCOP or the Commission obtaining a no-cost, nonexclusive, nontransferable, irrevocable, perpetual, royalty-free, worldwide license to use or have practiced such rights for or on behalf of the State of California for governmental purposes. Commission shall not purposefully enter into competition with a Licensee or take affirmative actions intended to effectively destroy the commercial market where a Licensee has introduced a Licensed Product. Subcontractor must obtain agreements to effectuate this clause with all persons or entities, except for the U.S. Department of Energy (other rights apply; contact UCOP for information), obtaining ownership interest in such patent rights. Previously documented inventions (whether patented or unpatented under the patent laws of the United States of America or any foreign country) are exempt from this provision.



- 2) Subcontractor shall disclose to UCOP and Commission on a confidential basis all Subject Inventions. UCOP or the Commission may provide any suggestions to Subcontractor concerning commercialization strategies and/or potential licensees for such invention within sixty (60) days of receiving the disclosure from Subcontractor. Subcontractor shall send, by March 1 of each year, a report to UCOP that provides non-proprietary information on the status of any patents and/or licensing agreements executed or under negotiation for Subject Inventions and/or activities by Licensee related to the development and testing of Licensed Product. UCOP will forward this report to the Commission.
- 3) March-in Rights. With respect to any Subject Invention in which Subcontractor has acquired title, to the extent permissible under Federal laws and regulations, UCOP and the Commission shall have the right to require Subcontractor, an assignee or Licensee of such patent rights to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant, upon terms that are reasonable under the circumstances, and if Subcontractor, assignee, or Licensee refuses such request, to grant such a license itself, if UCOP or the Commission determines that:
  - a) such action is necessary because Subcontractor, Licensee, or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the patent rights in such field of use; or
  - b) such action is necessary to alleviate health or safety needs that are not reasonably satisfied by Subcontractor, assignees, or their Licensees.

Final resolution, if not resolved under Paragraph 14, DISPUTES, will be settled in the courts of the State of California. The parties may refer to the Federal Government's procedures for handling march-in rights.

- 4) Future Reductions. Subcontractor will submit to UCOP and Commission in confidence within ninety (90) days after termination or expiration of this Subcontract, a report listing inventions that are conceived, but not actually reduced to practice, in the performance of this Subcontract. The Commission will identify in writing within 60 days those conceptions that it desires to reserve rights to should Subcontractor desire to actually reduce to practice those identified conceptions within 42 months after the termination or expiration of the Subcontract. Subcontractor has an affirmative duty to report to UCOP and the Commission those conceptions reduced to practice within the 42-month period.
- K. UCOP's and Commission's Rights to Invention. Subcontractor and all persons and/or entities obtaining an ownership interest in Subject Invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a Subject Invention, the following statement:

This invention was made with State of California support under California Energy Commission Agreement number INPUT. The Energy Commission has certain rights to this invention.

- L. Commission's Interest in Inventions. Upon the perfecting of a patent application on any Subject Invention, Subcontractor will fill out and sign a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Commission Contract Officer for complete processing, with a

copy to UCOP. The Commission Contract Officer will review the UCC.1 for complete information and file the completed UCC.1 with the Secretary of State's Office.

**M. Copyrights**

- 1) Copyrightable work first produced under this Subcontract shall be owned by Subcontractor, limited by the license granted to UCOP or the Commission in (2) below.
- 2) Subcontractor agrees to grant UCOP and the Commission a royalty-free, no-cost, nonexclusive, irrevocable, non-transferable, worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable work first produced or composed in the performance of this Subcontract.
- 3) Subcontractor will apply copyright notices to all Deliverables using the following form or such other form as may be reasonably specified by Commission:

©[Year of first publication of deliverable], [copyright holder]. All Rights Reserved.

- 4) Software. In the event software that is not a deliverable is developed under the Subcontract, Subcontractor shall have the right to copyright and/or patent such software and grants UCOP and the Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, world-wide, perpetual license to produce and use for governmental purposes the software, and its derivatives and upgrades that may be developed by the authors within 42 months following the termination or expiration of this Subcontract. Neither UCOP nor the Commission shall purposefully enter into competition with a Licensee or take affirmative actions intended to effectively destroy the commercial market where a Licensee has introduced a licensed product.

- N. Intellectual Property Indemnity.** Subcontractor will defend and indemnify UCOP and the Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of any third party claim solely arising out of the negligent or other tortious act(s) or omission(s) by Subcontractor, its employees, or agents, in connection with intellectual property claims against either deliverables or Subcontractor's performance thereof under this Subcontract.

## **14. DISPUTES**

In the event of a contract dispute or grievance, the following procedure shall be followed by all parties:

- A. Commission Dispute Resolution.** If a problem cannot be resolved within 10 working days between the Commission Contract Manager, the UC Contract Manager, and Subcontractor, then Subcontractor shall prepare a package in writing stating the issues in the dispute, the legal authority or other basis for Subcontractor's position and the remedy sought. The package must be submitted to UCOP and to the Commission Dispute Resolution Committee. The Committee shall make a determination on the problem within 10 working days after receipt of the package. Should OP/Subcontractor disagree with the Committee's decision, OP/Subcontractor may

appeal to the full Commission at a regularly scheduled business meeting. The Committee will provide OP/Subcontractor with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

Subcontractor shall continue with the responsibilities under this Subcontract during any dispute.

- B. **Binding Arbitration.** Should the Commission's Dispute Resolution procedure identified in Subparagraph A above fail to resolve a contract dispute or grievance to the satisfaction of Subcontractor, Subcontractor may elect to have the dispute or grievance resolved through binding arbitration. The Commission may also elect to have any contract dispute or grievance resolved through binding arbitration. Both parties must agree to submit the dispute or grievance to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. The decision rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The demand for arbitration shall be made no later than six months after the date of the contract's termination, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the Parties, any or all of these arbitration costs may be deducted from any balance of Subcontract funds. Both Parties must agree, in writing, to utilize Subcontract funds to pay for arbitration costs.

- C. If the Parties do not mutually agree to arbitration, the Parties agree that the forum to resolve a dispute is State court or Federal court, with the exception of Federal bankruptcy court.

## **15. STOP WORK**

The Commission may, at any time, by written notice to the UCOP and Commission Contract Officers, require UCOP and Subcontractor to stop all or any part of the Subcontract work tasks. UCOP shall immediately notify Subcontractor.

- A. **Compliance.** Upon receipt of such Stop Work order, Subcontractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

- B. Equitable Adjustment. An equitable adjustment shall be made by the Commission based upon a written request submitted by Subcontractor via UCOP. Such adjustment request must be made within 30 days from the date of receipt by UCOP of the Stop Work notice.
- C. Revoking a Stop Work Order. Subcontractor shall resume stopped work only upon receipt of written instructions from UCOP canceling the Stop Work order.

## **16. TERMINATION**

- A. Default. In the event of any default, Commission may, without prejudice to any of its other legal remedies, terminate the prime contract upon five (5) days' written notice to UCOP; UCOP shall immediately notify Subcontractor. In such event, UCOP shall pay only the reasonable value of the satisfactory services theretofore rendered by Subcontractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of Subcontract maximum payable.
- B. For Cause. The Commission may, for cause, and at its option, terminate the prime contract upon giving 30 days' advance written notice to UCOP. UCOP shall immediately notify Subcontractor. In such event, Subcontractor agrees to use all reasonable efforts to mitigate its expenses and obligations. Commission will pay for services rendered and expenses incurred within the terms of the work statement and which were satisfactorily performed prior to such notice of termination which could not by reasonable efforts of Subcontractor have been avoided, but not in excess of Subcontract maximum payable.

The term "for cause" includes, but is not limited to, the following reasons:

- Loss of State or Federal funding for this Subcontract;
  - significant change in State or Commission policy such that the work or product being funded would not be supported by the Commission;
  - reorganization or attempted assignment and delegation to a business entity unsatisfactory to the Commission;
  - change in Commission's staffing such that the work or product being funded can be done by staff of the Commission.
- C. Allowable Termination Costs. OMB Circular A-21, Section J.49, shall be used to determine allowable termination costs, but not in excess of the total amount of this Subcontract.

## **17. NOTICE**

Legal notices as required in this Subcontract may be given using the following delivery methods: certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the parties described in Exhibit A.

Delivery by fax or email is not considered notice for the purpose of this Subcontract. Legal notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery, in which case the effective date shall be postponed 24 hours, or whenever the next business day occurs.

## **18. RECORDKEEPING AND AUDIT PROVISIONS**

- A. Recordkeeping. The Subcontractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting principles, and sufficient to reflect properly all costs claimed to have been incurred in performing this Subcontract.
- B. Audit Rights. This Subcontract shall be subject to examination and audit by UCOP, the Commission, the California Department of General Services, and the Bureau of State Audits, or their designated representative, during the performance of work hereunder and for a period of three years after final payment under this Subcontract, unless a longer period of record retention is stipulated. Each shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Subcontract if it exceeds \$10,000. Access to such records during normal business hours, and the right to interview any employee who might reasonably have information related to such records, shall be permitted. Reasonable prior notice of any audit shall be provided by UCOP or Commission.
- C. Refund to UCOP or Commission. If UCOP or Commission determines that any invoiced and paid amounts exceed the actual allowable incurred costs, Subcontractor shall repay such amounts to Commission via UCOP within 60 days of request or as otherwise agreed by the Commission and UCOP. If such repayments are not received by Commission, UCOP shall be entitled to withhold further payments to Subcontractor.
- D. Audit Cost. The cost of a planned audit shall be borne by the Commission. If a planned audit results in a material finding, the Commission may determine that a special audit is required. The reasonable cost to the Commission of a special audit will be borne by the performing entity which is the subject of the special audit.

## **19. PAYMENTS TO COMMISSION**

This Paragraph applies only to awards for research projects. This Subcontract ☐ is ☐ is not for a research project subject to this Paragraph.

- A. In consideration of the Commission providing funding via UCOP, Subcontractor agrees to pay the Commission a portion of either Net Revenues or Net Royalties under the terms and conditions hereinafter set forth.
- B. Net Royalties. If Subcontractor licenses to a Licensee, Subcontractor's obligation to make payments to the Commission shall commence from the date that the Net Royalties calculation is positive. Payments are payable in annual installments and are due the first day of March for Net Royalties calculation made for Subcontractor's prior fiscal year. Subcontractor agrees to pay to Commission an amount equivalent to 10% of the total cumulative Net Royalties for itself and all its subcontractors, less payments made by Subcontractor to the Commission in previous years when Net Royalties for Subcontractor were positive. Payments shall be made by check, made payable to the California Energy Commission, PIER Fund.
- C. Net Revenues. If Subcontractor is the Licensee, Subcontractor's obligation to make payments to the Commission shall commence upon the first sale of the Licensed Product. Payments are payable in annual installments and are due the first day of March for the prior fiscal year of

Subcontractor. Subcontractor agrees to pay an amount equivalent to 1.5% of the Net Revenues by check made payable to the California Energy Commission, PIER Fund.

- D. Subcontractor agrees to and shall require each of its subcontractors to agree not to make any sale, license, lease, gift or other transfer of any Subject Invention, Copyrightable Work or Project-Related Products (PRP) with the intent of, or for the purpose of, depriving Commission of Net Royalties or Net Revenues hereunder. Generally, this means that Subcontractor will not make any sale, license, lease or other transfer of PRP for consideration other than fair market value except for research, educational, or other mutually agreed to purposes intended to serve the public benefit.
- E. Subcontractor and all its subcontractors shall maintain separate accounts within their financial and other records for purposes of tracking royalties and revenues due to the Commission under this Subcontract.
- F. Audits on Payments to Commission. Payments to the Commission are subject to audit as provided for under Paragraph 18, Recordkeeping and Audit Provisions.
- G. Defaults. In the event of default hereunder, the Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. Subcontractor's failure to pay, when due, any amount due and payable under the terms of this Subcontract, shall constitute a default under this Subcontract:
- H. Subcontractor acknowledges that a late payment of royalties/revenues owed to the Commission will cause the Commission to incur costs not contemplated by the parties. If a royalty/revenue payment is not paid when due, Subcontractor agrees to pay the Commission a late fee equal to 2% of the payment due. Additionally, Subcontractor agrees that royalty/revenue payments not paid within 15 days of the due date shall thereupon become debt obligations of Subcontractor to the Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- I. The parties agree that Subcontractor does not guarantee compliance with payments under this Paragraph in the event of default by a subcontractor to Subcontractor. Amounts in default and not paid by Subcontractor's subcontractor will not be paid by Subcontractor under Subparagraphs B and C, and the fees and obligations of Subparagraph H pursuant to such default and non-payment shall not be a responsibility of Subcontractor. However, Subcontractor has an affirmative duty to monitor its subcontractors' compliance and take reasonable enforcement measures calculated to obtain its subcontractors' performance of the payment obligations of this Paragraph.

## **20. INDEMNIFICATION**

- A. Subcontractor shall defend, indemnify, and hold The Regents, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Subcontract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Subcontractor, its officers, agents, or employees.

- B. The Regents shall defend, indemnify, and hold Subcontractor, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Subcontract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of The Regents, its officers, agents or employees.

**IF INSURANCE REQUIREMENT IS WAIVED, USE THIS ARTICLE:**

**21. INSURANCE**

The Subcontractor, at its sole cost and expense, shall insure its activities in connection with this Subcontract and obtain, keep in force and maintain insurance as follows:

- A. Comprehensive or Commercial Form General Liability Insurance requirement: if Subcontractor already has professional liability insurance in place, UCOP will accept the existing coverage limits. If Subcontractor does not have professional liability insurance coverage, UCOP will waive the requirement for this project only.
- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a per person limit of not less than \$100,000 and a total limit per accident of not less than \$300,000, when using automobiles in conducting research under this Subcontract.

**IF INSURANCE REQUIREMENT IS *NOT* WAIVED, USE THIS ARTICLE:**

**21. INSURANCE**

The Subcontractor, at its sole cost and expense, shall insure its activities in connection with this Subcontract and obtain, keep in force and maintain insurance as follows:

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
- 1) Each Occurrence: \$1,000,000
  - 2) Products/Completed Operations Aggregate: \$1,000,000  
(this requirement is ☐ applicable ☐ not applicable under this Subcontract)
  - 3) Personal and Advertising Injury: \$1,000,000
  - 4) General Aggregate: \$3,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Subcontract. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Subcontract.

- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit no less than one million dollars (\$1,000,000) per occurrence if using automobiles in conducting research under this Subcontract.
- C. Workers' Compensation as required under California State law.

- D. Professional Medical and Hospital Liability Insurance (contractual liability included) with limits of two million dollars (\$2,000,000) per occurrence and five million dollars (\$5,000,000) general aggregate.

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Subcontract. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Subcontract.

Note: Professional Medical and Hospital Liability Insurance is required only when health care professionals and/or health care students are involved in patient care under this Subcontract.

- E. Commercial Blanket Bond with a limit no less than the amount of grant funds provided by this Subcontract in Subcontractor's possession at any one time covering all employees of Subcontractor, including coverage to protect money and securities as found in a Comprehensive Crime Policy.
- F. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of The Regents and the Subcontractor against other insurable risks relating to performance of the Subcontract.
- G. The coverages required under this paragraph shall not in any way limit the liability of the Subcontractor.
- H. The coverages referred to under Subparagraphs A and B shall be endorsed to include The Regents as an additional insured. Such a provision, however, shall apply only in proportion to and to the extent of the negligent acts or omissions of Subcontractor, its officers, employees, and agents. A thirty (30)-day advance written notice (10 days for non-payment of premium) to The Regents of any modification, change or cancellation of any of the above insurance coverages is required.

## **22. AFFIRMATIVE ACTION/NON-DISCRIMINATION**

Subcontractor agrees that when applicable, the following are incorporated herein as though set forth in full: the non-discrimination and affirmative action clauses contained in Executive Order 11246, as amended, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations contained in Title 41, part 60 of the Code of Federal Regulations, as amended; the non-discrimination and affirmative action clause contained in Section 503 of the Rehabilitation Act of 1973, as amended, relative to the employment and advancement in employment of qualified individual(s) with a disability without discrimination, and the implementing rules and regulations in Title 41, part 60-741 of the Code of Federal Regulations; the non-discrimination and affirmative action clause of the Vietnam Era Veterans Readjustment Assistance Act of 1974 relative to the employment and advancement in employment of qualified special disabled veterans, recently separated veterans, Vietnam era veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, without discrimination, and the implementing rules and regulations in Title 41, part 60-250 of the Code of Federal Regulations; and the non-discrimination clause required by California Government Code Section 12990 relative to equal employment opportunity for all persons without regard to race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition (cancer-related or genetic characteristics), marital



status, sex, age, or sexual orientation, and the implementing rules and regulations of Title 2, Division 4, Chapter 5 of the California Code of Regulations.

## 23. USE OF NAME

Neither the Subcontractor nor the Regents will use the name of the other, either expressly or by implication, in any publicity or advertisement, except for purposes of support acknowledgement, without the express written approval of the other party to this Subcontract.

## 24. CONFLICT OF INTEREST

**REMOVE THIS SECTION if subcontract is written under Master Agreement 500-02-004.**

- A. Compliance. Subcontractor will comply with this provision when conducting activities as described below in Subparagraphs B and C, under UCOP's prime contract number **INPUT** with the Commission.
- B. Non-Competitive Contract Activities. For the purposes of this Conflict of Interest paragraph, "non-competitive contract activities" apply to contracts to be awarded on a non-competitive basis (interagency agreements, and sole- or single source contracts) by the Commission directly or via UCOP, and include without limitation: discussion of potential contractors; discussion of possible proposals or contracts; evaluation of information related to potential funding (i.e., preliminary documents or pre-proposals) or actual proposals from potential contractors; and recommendation of, scoring or voting on proposed contracts.
- C. Competitive Solicitation Activities. For the purposes of this paragraph, "competitive solicitation activities" are defined as preparation and administration of a competitive solicitation to be issued by the Commission directly or via UCOP, and shall include but are not limited to:
  - 1) solicitation planning, development and preparation,
  - 2) participation in pre-bid conferences; and
  - 3) proposal evaluation and scoring.

If Subcontractor's Principal Investigator (PI) or any students or assistants of the PI consult with industry experts in solicitation planning, development, or preparation, the Subcontractor must ensure that unfair advantage is not given to those experts consulted prior to release of the solicitation. A solicitation shall not be written in a way that the experts consulted would have benefits in preparing a proposal vis-à-vis experts not consulted. If experts are consulted, they shall be informed about the public interest R&D context for the inquiry and encouraged to provide objective information that is consistent with this public purpose rather than to give advice that would benefit them or possibly disadvantage others who might compete in the solicitation. Examples of information that could be sought might include: the state of scientific and technical knowledge in the subject area, the performance, costs and benefits of alternative scientific and technical approaches, public interest RD&D needs, opportunities and potential benefits, and the possible interest of industry, government and non-profit organizations in fostering the application of RD&D results. Examples of topics that could result in an unfair advantage include advice on: specific screening criteria, evaluation criteria, or work statement tasks.

- D. Solicitation Confidentiality. All persons (including the PI and other key personnel and subcontractors) involved in the preparation or administration of a Commission-sponsored competitive solicitation cannot discuss or disclose in any manner or by any means the details of any such solicitation, solicitation document and any other pertinent aspects of the solicitation with anyone other than the persons directly involved in solicitation preparation and administration until UCOP has submitted the list of proposed awardees to the Commission Contract Manager.
- E. Conduct
- 1) For the purposes of this subparagraph, "income" shall have the meaning set forth in Government Code section 82030 and shall not include salary or expenses received from a state, local or federal government agency. "Business position" shall mean a position in an entity operated for profit.
  - 2) Non-Competitive Contract Activities
    - a) Subcontractor's PI, and any students or assistants of the PI, involved in non-competitive contract activities shall not recommend themselves for an award, and shall not be a part of or receive an award issued under a related solicitation sponsored by the Commission.
    - b) Any person (other than the PI and students or assistants of the PI) may participate in non-competitive contract activities, as long as the activity is not related to funding of a non-competitive contract for him/herself.
    - c) No person, including the PI, shall participate in any non-competitive contract activities that involve an entity from which the person or has received income in the last 12 months or currently holds a business position. Those persons involved in non-competitive contract activities shall recuse themselves from any discussion involving such a proposal.
  - 3) Competitive Solicitation Activities
    - a) Subcontractor's PI shall not submit a proposal or be a part of any proposal submitted for any solicitation whose resulting awards are funded under the prime contract 500-99-013 between the Commission and UCOP.
    - b) Students or assistants of Subcontractor's PI involved in competitive solicitation activities shall not submit a proposal or be a part of a proposal submitted in response to that solicitation.
    - c) No person, including the PI, involved in competitive solicitation activities shall participate in evaluating any proposals received from any entity from which the person has received income in the last 12 months or currently holds a business position. Those persons involved in competitive solicitation activities shall recuse themselves from evaluating such a proposal.

- 4) Exceptions to the rules in this Subparagraph E may be granted to those entities and individuals subject to Subparagraph E if the following criteria and procedures are satisfied:
- a) Criteria:
    - 1. The exception does not violate conflict of interest laws.
    - 2. The situation is unique and not widely applicable to other parties.
    - 3. The risk of potential conflict is outweighed by the importance of the value the research adds to the PIER Program.
    - 4. The research is unable to be duplicated or performed by any other avenue.
    - 5. The exception is in the best interest of the Commission.
  - b) Procedures:
    - 1. UCOP may seek exceptions to the specific provisions of this Subparagraph E if UCOP believes the criteria detailed in this paragraph have been satisfied.
    - 2. In such instances, UCOP shall first consult with the Commission.
    - 3. If the Commission Contract Manager, after consultation with the Commission's Legal Office, also believes the criteria have been satisfied, the Commission Contract Manager shall present the proposed exception to the Commission Research, Development and Demonstration (RD&D) Committee.
    - 4. The exception may contain limitations or conditions applicable to the Subcontractor.
    - 5. The RD&D Committee may grant the exception upon a finding that the criteria have been satisfied.

THE REGENTS of the UNIVERSITY of  
CALIFORNIA, OFFICE OF THE PRESIDENT

SUBCONTRACTOR

By:	_____	_____
	_____	_____
	_____	_____
Date:	_____	_____